CHANDRA SEKARAN RAMIYAH & ANOR

v.

PP

COURT OF APPEAL, KUALA LUMPUR
LAMIN MOHD YUNUS PCA
NH CHAN JCA
HAIDAR MOHD NOOR JCA
[CRIMINAL APPEAL NO: B05-24 & 25-1997]
26 APRIL 2000

CRIMINAL PROCEDURE: *Sentence - Appeal against sentence - 12 years' imprisonment for culpable homicide not amounting to murder - Whether manifestly excessive - Whether trial judge applied correct principles of sentencing - Balance between interests of public and of offender - Whether any grounds for appellate interference - Penal Code, s. 304 (1st limb)*

The appellants pleaded guilty to a reduced charge of culpable homicide not amounting to murder under the 1st limb of s. 304 of the Penal Code and were convicted and sentenced to 12 years' imprisonment each. This was their appeal against sentence.

Held:
Per Haidar Mohd Noor JCA

[1] Sentencing is at the discretion of the trial court. Until it is shown that the trial judge has not applied the correct principles of sentencing, an appellate court will not interfere. Apart from the interests of the offender, the judge must consider the interests of the public as well in order to strike a balance. The sentences imposed here were not manifestly excessive and there were no grounds to warrant any appellate interference with them.

[Appeal dismissed.]

*[**Bahasa Malaysia** Translation Of Headnotes]*

Perayu-perayu telah mengaku bersalah atas tuduhan terkurang homisid salah tidak bermaksud bunuh di bawah rangkap pertama s. 304 Kanun Keseksaan dan telah disabitkan bersalah dan dihukum penjara selama 12 tahun setiap seorang. Ini adalah rayuan mereka terhadap hukuman tersebut.

Diputuskan:
Oleh Haidar Mohd Noor HMR

[1] Hukuman adalah tertakluk kepada budi bicara mahkamah perbicaraan. Sehingga dapat dibuktikan bahawa hakim perbicaraan tidak menggunakan prinsip-prinsip hukuman yang betul, suatu mahkamah rayuan tidak akan campur tangan. Selain dari kepentingan pesalah, hakim mestilah mempertimbangkan kepentingan awam juga untuk membuat pertimbangan yang seimbang. Hukuman-hukuman yang dikenakan di sini jelas tidak keterlaluan dan tidak terdapat alasan untuk membenarkan campur tangan berupa rayuan dengan mereka.

[Rayuan ditolak.]

Case(s) refererred to:
Bhandulananda Jayatilake v. PP [1982] 1 MLJ 83 ***(foll)***
PP v. Loo Choon Fatt [1976] 2 MLJ 256 ***(refd)***

Legislation referred to:
Penal Code, ss. 34, 302

Criminal Appeal No: B-05-24-97
For the appellant - Karpal Singh; M/s Karpal Singh & Co
For the respondent - K Muniandy DPP

Criminal Appeal No: B-05-25-97
For the appellant - BS Anatham; M/s JC Fernandez & Co
For the respondent - K Muniandy DPP

[Appeal from High Court, Shah Alam; Criminal Case No: 45-10-1994]

Reported by Gan Peng Chiang

JUDGMENT

Haidar Mohd Noor JCA:

The two appellants, Chandra Sekaran a/l Ramiyah and Natarajan a/l Sabapathy were originally charged for causing the death of Shah Jehan, a citizen of Bangladesh, an offence under s. 302 of the Penal Code read with s. 34 of the Penal Code.

The trial proceeded before the learned judge at Shah Alam High Court on 17 March 1997 and after the completion of the evidence of the first witness for the prosecution, one Mohd. Abdul Kader (SP1), it was adjourned to 18 March 1997 for continuation. On the day of the continued hearing, the defence proposed a reduction of the charge to s. 304 (1st limb) of the Penal Code to which the prosecution agreed on condition that both appellants

would plead guilty to the proposed reduced charge. The learned judge then adjourned the case to 20 March 1997 for their pleas to be taken as well as for mitigation and sentence.

On 20 March 1997, the prosecution tendered an amended charge as agreed by both parties (exh. P7). The amended charge was read to both appellants and both of them pleaded guilty and understood the nature and consequences of their pleas. The facts of the case, as amended, were read and explained to both appellants (exh. P8). Both of them admitted the facts as correct. After their counsel submitted the mitigation on their behalf in respect of the sentence, the learned judge imposed a sentence of twelve years' imprisonment on each of the appellant, the sentence to take effect from the date of their arrest, 8 September 1994.

The appeal to this court is in respect of the sentence only.

We do not propose to set out the facts of the case as they are set out fully in exh. P8 (pp. 48 and 49 of the appeal record).

The learned judge in his grounds of judgment in respect of the sentence set out three brief grounds by way of summary. We regret to note that the grounds of judgment are sketchy. Be that as it may, we are here dealing with the appeal against sentence only. In order for the appellants to persuade us to disturb the sentence imposed by the court below, the appellants will have to show us that the learned judge erred in applying the correct principles of sentencing as it has been repeatedly said that the power of sentencing is a discretion of the trial court. In considering the appeal on sentence, the best guidance can be drawn from what the Federal Court said in *Bhandulananda Jayatilake v. Public Prosecutor* [1982] 1 MLJ 83 at p. 84:

> ... this court has said it again and again that it will not normally interfere with sentences, and the possibility even the probability, that another court would have imposed a different sentence is not sufficient per se, to warrant this court's interference.
>
> For a discretionary judgment of this kind to be reversed by this court, it must be shown to our satisfaction that the learned judge was embarking on some unauthorised or extraneous exercise of discretion.

We do appreciate that it is the duty of the counsel in mitigating for the accused in respect of sentencing to urge the court to consider the interests of the accused. Though the judge must consider the interests of the accused, he had nevertheless to consider the interests of the public as well. In other words he has "to strike a balance, as far as possible, between the interests of the public and the interests of the accused" per Hashim Yeop A. Sani J (as he then was) in *PP v. Loo Choon Fatt* [1976] 2 MLJ 256 at p. 258.

The maximum sentence for the offence for which the appellants were convicted is twenty years' imprisonment and in our view the sentence of twelve years' imprisonment to take effect from the date of arrest on each of the appellant is not manifestly excessive. There were no grounds to warrant us to interfere with the sentence.

The appeal was dismissed and the sentence affirmed by us.